



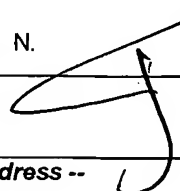
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,558	10/28/2003	Kent N. Johnson	40736.0001	9168
26712	7590	12/10/2004	EXAMINER	
HODGSON RUSS LLP ONE M & T PLAZA SUITE 2000 BUFFALO, NY 14203-2391			LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/695,558	Applicant(s) JOHNSON, KENT N.	
	Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12/24/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 3, 10, 16 and 24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-9, 11-15, 17-19, 21-23, 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/15/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's election without traverse of Species I, shown in Figures 1-6, claims 1-2, 4-9, 11-15, 17-23 and 25-28, in the reply filed on November 22, 2004, is acknowledged.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearson (US 1,261,604).

Pearson discloses a railcar subassembly having all the features recited in the instant claims, including cross bearing member 1 having top and bottom flanges 2,3, side post 7 connected to the crossing bearing member, and reinforcing member arranged as broadly claimed. Note that top flange 3 of Pearson has a cutout portion that is readable as forming an opening for accommodating side post 7.

Regarding the expression "gondola" recited in the claims, note that said expression is readable as an intended use of the railcar subassembly for a gondola car, and that since the structure of Pearson is inherently capable of such intended use, the instant claimed limitation is considered met.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 8, 11-15, 17-19, 21-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson (US 1,261,604).

Pearson is applied above.

Regarding the instant claimed side posts that support an angled side wall on a gondola railcar, as recited in claim 8, it is the examiner's position that Pearson's structure is designed for freight railcars, and it would have been obvious to one skilled in the art to use such structure of Pearson on a known type of freight railcars, such as gondola cars, so as to achieve a strong support for the sidewall posts thereof.

Regarding the instant claimed sidewall post being welded to or abutting the top or bottom flange of the cross bearing member, as recited in instant claims 5, 11 or 21, it is noted that post 7 of Pearson is secured to the cross bearing member by rivets 10 rather than by welding; however, welding is a well known alternative for attaching metal parts together (Official Notice is taken); therefore, it would have been obvious to one skilled in the art to alternatively weld posts 7 of Pearson to the cross bearing member along the adjacent portions of the posts and cross bearing member so as to form an integral unit for greater strength. Note that when the adjacent portions of the posts and cross bearing member are joined by welding, said adjacent portions of the posts and cross bearing member (which includes the web and the top and bottom flanges of the cross bearing member) are readable as being abutted as claimed.

6. Claim 20 is allowable.

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should further consider the structures of Sage, Irwin, and Herrmann.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le  
Primary Examiner  
Art Unit 3617

mle  
12/7/04